

Serial No.: 10/706,892

## REMARKS

By this amendment, claims 10, 17, and 19 has been revised, and claims 20 and 21 have been added to place this application in condition for allowance. Currently, claims 1-14, and 16-21 are before the Examiner for consideration on their merits.

In review, the Examiner has withdrawn the previous rejections of record, and has cited new prior art in support of the final rejection of the claims. Claim 19 is rejected under 35 U.S.C. § 102(b) based on United States Patent No. 2,971,612 to Graber. Claims 1, 9-11, 14, and 16-19 are rejected under 35 U.S.C. § 103(a) based on the combination of Graber and United States Patent No. 3,949,844 to Larson et al. (Larson).

Claims 2-8, 12, and 13 are considered to contain allowable subject matter. Since Applicants believe that broader protection is still available for the invention, limiting the claims to include the subject matter of these dependent claims is being deferred.

Applicants respectfully traverse the rejection of claim 19 on the grounds that the Graber does not anticipate claim 19, as amended. Further, this reference alone cannot establish a *prima facie* case of obviousness against claim 19.

The rejection of claims 1, 9-11, 14, and 16-19 is also traversed on the grounds that the combined prior art of Graber and Larson does not establish a *prima facie* case of obviousness. The rejections are addressed under the heading corresponding to the independent claims that have been rejected.

CLAIM 19

Serial No.: 10/706,892

Claim 19 has been amended to clarify that the hydraulic pump is externally mounted with respect to the brakes of the axle assembly. This amendment is clearly supported by the application as originally filed, wherein the pump is shown external of the brakes.

Second, this amendment removes Graber as an anticipatory reference since the pump of Graber is internal to the brake assembly. Since Graber lacks this feature of claim 19, it cannot anticipate claim 19.

Moreover, Graber cannot establish the obviousness of claim 19, since there is no reason why one of skill in the art would remove the hydraulic pump of Graber and make it external to the brake assembly. The hydraulic pump is a dual use pump in the Graber brake, controlling the flow of cooling fluid and assisting in braking. To remove this pump and make it external to the brake of Graber goes against the teachings of Graber, and one of skill in the art would not be motivated to make such a change. More specifically, one of skill in the art would have to provide a separate drive for the pump and one that does not link the pump operation to rotation of the spline 11, and reroute the cooling inlet and outlet of Graber. There is just no reason why one of skill in the art would dismantle Graber in such a manner.

In addition, the invention is fundamentally different from Graber in that the invention is designed to interface with un-powered axle assemblies, whereas Graber is concerned with the inner workings of a brake. This is further substantiation that one of skill in the art would not be led to modify Graber and arrive at the invention.

Serial No.: 10/706,892

Therefore, there is no basis in fact to allege that Graber either anticipates or renders obvious claim 19, and the rejection must be withdrawn as applied to this claim.

CLAIMS 1 and 17

The rejection of claims 1 and 17 is in error for the sole reason that the Examiner has failed to take into account all of the elements of the claim. Each of these claims call for a hydraulic pump, a pump drive, and a transmission. In the rejection, the Examiner alleges that the cam mechanism of Graber is the equivalent of the claimed transmission. Even assuming this to be correct, the rejection fails to address the limitation of the pump drive linked to the transmission. While Graber may have a "transmission" as the cam 62 and piston 61 as alleged by the Examiner, there is no pump drive that is linked to the transmission for driving the pump. Therefore and regardless of the propriety of combining Larson with Graber, the combination still fails to teach the elements of claims 1 and 17. Thus, the rejection is in error and must be withdrawn.

It is further argued that the rejection based on Graber and Larson is flawed since the Examiner has not supplied the requisite motivation to modify Graber as alleged in the Office Action. In the rejection, the Examiner concludes that it would be obvious to modify Graber with the teachings of Larson since using Larson would simplify Graber. However, this conclusion is not supported by the teachings of either Graber or Larson. Graber teaches a pump mechanism for each brake that provides both hydraulic braking power and cooling fluid movement. Critical to this dual capacity is the specific and mutual arrangement of the pump, ports, valves, etc. In contrast to Graber, Larson

Serial No.: 10/706,892

merely teaches a brake cooling fluid system for moving the cooling fluid that uses one pump for the front brakes, and another pump for the rear brakes. What the Examiner would have Applicants' believe that one of skill in the art would take only select features of Larson, modify them, and then and use them in Graber. According to the rejection, one of skill in the art would not use the main pumps 16 and 34 of Larson, but would only use the pump 19.

Contrary to the Examiner's assertion, one of skill in the art would not be motivated to pick select parts of Larson and use them in Graber given that Graber and Larson operate in fundamentally different ways. Graber is specifically designed to function within a brake assembly, whereas Larson is simply an external brake cooling system. The Examiner is employing hindsight to reject the claims, and the rejection under 35 U.S.C. § 103(a) is tainted for this reason and could not be sustained on appeal.

#### CLAIM 10

Claim 10 is amended similar to claim 19 by specifying that the hydraulic pump is mounted externally of brakes of the un-powered axle assembly. Claim 10 is patentable for the same reasons as claim 19 is, i.e., there is no suggestion of mounting the pump of Graber external to the brake assembly. The lack of such motivation underscores the fundamental differences between Graber and the invention, and shows that one of skill in the art could not arrive at the invention given the teachings of Graber.

#### CLAIMS 20 and 21

Serial No.: 10/706,892

Claims 20 and 21 are patentable for the same reasons as claim 19, i.e., there is no external mounting of the pump in Graber, and therefore, Graber cannot teach the invention.

### SUMMARY

Applicant submits that the Examiner has failed to establish a *prima facie* case of anticipation and obviousness against the enumerated claims above, the rejections of record should be withdrawn, and claims 1-14, and 16-21 should be allowed. More specifically, Graber does not anticipate claim 19, and Graber and Larson do not render independent claims 1, 10, 17, 20, and 21 obvious under 35 U.S.C. § 103(a).

While this amendment is made after final rejection, it is respectfully submitted that it clearly places the application in condition for allowance, and therefore, its entry is justified. The cited prior art is not relevant to the invention, and, while it is elicited an amendment of the claims, applicants have argued previously the uniqueness of the invention, and these arguments are equally applicable to the current rejection.

Accordingly, the Examiner is respectfully requested to examine this application and pass all pending claims onto issuance.

The above constitutes a complete response to all issues raised in the Office Action of March 11, 2005.

If an interview would expedite the prosecution of this application, the Examiner is respectfully requested to telephone the undersigned at 202-835-1753.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136(a) is hereby made. Please also charge any shortage in fees due in connection

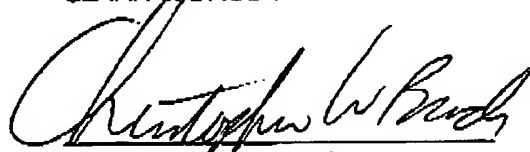
Serial No.: 10/706,892

with the filing of this paper, including extension of times fees to deposit account number 50-1088 and please credit any excess fees to such account.

Again, reconsideration and allowance of this application is respectfully solicited.

Respectfully submitted,

CLARK & BRODY



Christopher W. Brody

Reg. No. 33,613

**Customer No. 22902**

Clark & Brody

1090 Vermont Avenue, NW, Suite 250

Washington, DC 20005

Telephone: 202-835-1111

Facsimile: 202-835-1755

Date: May 10, 2005